

**Letter of Findings: 65-20200286
Indiana Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient evidence that it should not be assessed the full civil penalty for a motor carrier violation.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the proposed assessment.

STATEMENT OF FACTS

Taxpayer is a Florida trucking company with vehicles that travel through Indiana. On October 4, 2018, the Indiana State Police ("ISP") reported Taxpayer's commercial motor vehicle for an overweight violation. As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

ISP reported that Taxpayer was in violation of the statutorily allowed gross weight for commercial vehicles while transporting lumber through Indiana. Taxpayer was at 80,700 pounds, which was over the statutorily allowed limit of 80,000 pounds. After receiving this report, the Department issued a proposed assessment for an overweight penalty. Taxpayer protested the imposition of that penalty.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight

exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, Taxpayer failed to obtain the statutorily required permit. According to the ISP report, Taxpayer transported lumber that was more than the weight allowed under IC § 9-20-4-1. Taxpayer did not believe truck was overweight and did not believe it needed a permit.

The Department imposed the civil penalty in accordance with IC § 9-20-18-14.5 because Taxpayer failed to obtain a permit. Taxpayer claims that it was unaware the permit was needed because it did not believe the truck was overweight. Taxpayer claims it relied on the seller to load the logs and that the venue has no scale to check the weight. Taxpayer claims that ISP gave the driver a warning and this is the only violation that the company has had. Thus, Taxpayer believes the civil penalty assessed by the Department is excessive.

The Department notes that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. Second, IC § 9-20-18-14.5 provides that a civil penalty issued by the Department under IC Art. 9-20 is (1) in addition to and separate from any other civil penalties issued under Titles 8 and 9 and (2) in addition to any fines imposed by a court. In this case, Taxpayer failed to obtain a permit before transporting the lumber; therefore, it is appropriate for Taxpayer to receive a No Permit Civil Penalty.

However, the Department understands Taxpayer's position that it relied on the vendor loading the logs and that the Department may reduce the No Permit Civil Penalty amount. In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part. Sustained to the extent that the initially assessed amount is not due but denied to the extent that there is still a penalty due.

September 29, 2020

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